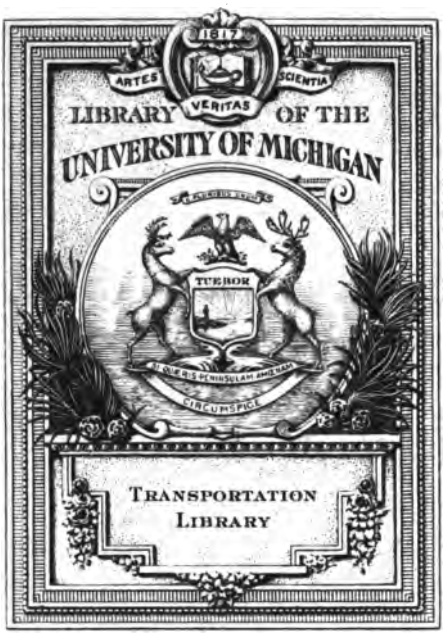
SOME PHASES OF THE TRANSPORTATION PROBLEM

By FRANCIS B. JAMES

WASHINGTON, D. C. JOHN BYRNE & CO.
PRICE, FIFTY (50) CENTS


1817
ARTES
VERITAS
SCIENTIA
LIBRARY OF THE
UNIVERSITY OF MICHIGAN
TUEBOR
CIRCUMSPICE
TRANSPORTATION
LIBRARY

Some Phases of the Transportation Problem

BY

Francis B. James

1921
WASHINGTON, D. C.
JOHN BYRNE & CO.

PUBLISHERS' PREFACE

This booklet consists of an address on "Some Phases of the Transportation Problem," delivered before the National Association of Sand and Gravel Producers at Louisville, Ky., January 12, 1921, to which have been added some authorities and an index. It discusses the question from a new viewpoint of American Nationalism and treats the subject from both its juristic and economic aspect. The speaker came to his theme after a long experience in dealing with lego-economic matters augmented by his endeavors to bring the law-merchant into harmony with business and sound economics.

JOHN BYRNE & CO.

Washington, D. C., February 8, 1921.

TABLE OF CONTENTS

TABLE OF CITATIONS

SOME PHASES OF THE TRANSPORTATION PROBLEM

It will be helpful to an understanding of the transportation question to make a short historical summary of the growth and development of our national commerce and the great national policies shown by our national legislation primarily to make America self-sustaining within itself by promoting a great diversity of industrial and commercial activities and the general diffusion and distribution of population and industry within our great American nation and the recognition of the principles of equal opportunity of all business before the law and the broadest economic freedom and liberty consistent with the general welfare.* If we go back to Colonial days we find our pilgrim fathers struggling to develop the commerce of the young Colonies and to build ships on our own shores to carry the Colonial coastwise and foreign trade in American bottoms.† Commerce was the impelling

* The Preamble to the Constitution declares that it was ordained and established to "promote the general welfare," and Clause 1, of Section 8, of Article I, gave Congress power to lay and collect taxes, duties, imposts and excises to provide for the general welfare.

† See Giesecke on "Commercial Legislation Before 1789" (1910).

force that led the Colonies to make their successful struggle with England. Commerce was the predominating factor that led to the adoption of the Constitution of the United States. It was transportation, as a great instrumentality of commerce, that brought about the Louisiana Purchase so as to open up the free navigation of the great Mississippi River to American commerce. Long before the steam railroad had demonstrated its utility as an instrument of transportation, the people realized that some cheap method of transportation must be devised for the purpose of connecting the East with the West and uniting the country into one commercial unit, and this led to the building of the Erie Canal, connecting New York with the Great Lakes, opened in 1825. It was commerce that led the people of Philadelphia to reach out and build a railroad from Philadelphia to Pittsburgh at the head waters of the Ohio River. Likewise the city of Baltimore built the Baltimore & Ohio Railroad to Parkersburg to reach the inland waterways of the West. It was commerce that recognized the value of the steam railroad and its practical utility in our national development. The cause of commerce gave us

the "Soo" and the Panama canals. Commerce made the railroads and the railroads in their turn augmented commerce. In 1830 a steam railroad costing $4,500,000 was put into successful operation from Manchester to Liverpool, and it practically demonstrated that the steam railroad was thereafter to become the chief instrument in advancing civilization.* This experiment showed that the steam railroad would make possible the rapid development of America as a great nation in and unto itself, and was followed by a wild frenzy of railroad building. Cities raised large funds for building railroads; counties and States followed. The National Government gave bounties to the railroads by granting sections of land to encourage their building into the West and to the Pacific Coast. All railroads were but public highways impressed with a public interest and therefore were subservient to the general welfare, although they were all largely built with private capital and operated through corporations whose directors and officials were the officials of such private companies and not holders of public office.† In

* Charles Francis Adams' "Railroads: Their Origin and Problems" (1878) pp. 1-79.

† Olcott vs. Supervisors (1872) 16 Wallace, 678; Mr. Justice Strong at pp. 694, 695.

the course of time, however, these railroads became so powerful that instead of industry and commerce regulating the railroads, the railroads proceeded to regulate industry and commerce by the imposition of exorbitant freight rates and practicing discriminations as between individuals and localities and giving rebates to favored powerful shippers. It was the abuse of power by these private corporations, which conducted a public business, that led to legislation for their regulation. At first many of the States created commissions to deal with the transportation problem. As the jurisdiction of each State commission was limited to its own geographical confines such regulation of our commerce which had become national in character was necessarily confined within restricted limits. The conflicting regulations of these State bodies and the fact that their jurisdiction did not directly extend beyond the confines of the respective States, and the further fact of the bearing of their regulations and orders on the interstate commerce of the nation as a whole, inevitably pointed to the necessity of a national body to deal with the national problems of transportation. This led to the creation of the Interstate Commerce Commission in 1887.

The Constitution of the United States had expressly vested in Congress power not only to regulate interstate commerce,* but express power to pass any and all laws necessary to carry into execution that power.† It will thus be seen that these powers were vested in Congress as a national legislative body.‡ By the Constitution the defining of our national policies as to commerce was thus vested under our democratic form of government in a representative assembly elected by the people.** It was impossible, however, by reason of the variety and nature of the problems that a legislative body like Congress could administer the laws enacted by it. The Act to Regulate Commerce of 1887 § therefore created an Interstate Commerce Commission with authority to carry out the national policies and enter orders upon the ascertainment of the existence of a state of facts bringing any matter within the legal standards of public

* Clause 3, Section 8, Article I.

† Clause 18, Section 8, Article I. See M'Culloch vs. Maryland (1819) 4 Wheaton, 316; United States vs. Ferger (June 2, 1919) 250 U. S., 199, Mr. Chief Justice White at pp. 203 and 206.

‡ Section 1 of Article I vested "All legislative Powers herein granted" in the Congress of the United States.

** The Preamble to the Constitution speaks of "We the people."

§ 24 Stat. 379. Signed by the President, Feb. 4, 1887.

policy fixed by the Act to Regulate Commerce.* In creating the Interstate Commerce Commission it was a part and parcel of a national policy to create a body of men who in the course of time would become experts in the work of administering the great national policies as embodied in the Act to Regulate Commerce. The Act to Regulate Commerce of 1887 which created the Interstate Commerce Act was in a large measure an experiment growing out of conditions then existing and in an imperfect way applicable to the complex questions then confronting the people. The two greatest evils which at that time presented themselves to the people and which they hoped to remedy by the Interstate Commerce Act, were excessive freight rates and gross discriminations. But it has been a long stretch since 1887 and from time to time many new intricate problems have presented themselves which required solution and the Interstate Commerce Act has been frequently amended to keep pace with the growth of public sentiment and the necessities of commerce and the correction of new evils which had

* Field vs. Clark (Feb. 29, 1892) 143 U. S., 649; Intermountain Rate Cases (June 22, 1914) 234 U. S., 476, at p. 486; Buttfield vs. Stranahan (Feb. 23, 1904) 192 U. S., 470; Union Bridge Co. vs. United States (Feb. 25, 1907) 204 U. S., 364.

shown themselves from day to day and the need of new and added regulations to protect and preserve our transportation facilities as instruments to advance that commerce and to stamp out and eliminate new and added abuses practiced by the carriers. So that we may have some idea of the growth of our railroads in the nearly thirty-four years which have elapsed since the enactment of the Interstate Commerce Act, a few comparative figures will be presented. In 1887 when the Interstate Commerce Commission was created there were about 156,000 miles of railroad—today there are at least 235,000 miles. When I say "miles of railroad" I do not mean miles of track. If we take the double tracks and other tracks necessary for the railroads to perform their proper functions we have at least 375,000 miles of track. In 1887, 1,000,000 freight cars were adequate to perform our transportation service, while today we have in the neighborhood of 2,500,000 freight cars, probably half of which are open top cars. We still have an inadequate freight car equipment and their number must be materially increased to take care of the movement of traffic during the seasons of the year when the maximum equipment is required. But mere figures as

to the number of cars necessary to perform the transportation of the country does not of itself reflect the comparative carrying capacity of the cars, because 34 years ago when the Commission was created, the average capacity of cars did not exceed 25 tons, while today the average capacity is more than 42 tons per car. Cars are being built today designed for carrying heavy commodities with a marked capacity of 110 tons per car. In 1887 the annual freight revenue was but about $700,000,000, while today under a very much largely increased volume of traffic and under successive advances in rates, such as the 5 and 15 per cent advance in Official Classification Territory, the 25 per cent advance under General Order No. 28 and the 25 to 40 per cent advance in different territories under Ex Parte 74 made under the Transportation Act of 1920, the annual freight revenue of the carriers will reach approximately $4,800,000,000 in 1921 under a normal volume of traffic. The comparison is almost staggering as we note that the annual freight revenue of the carriers grew from $700,000,000 in 1887, thirty-four years ago, to approximately $4,800,000,000 estimated for 1921. In 1887 the railroads carried approximately 600,000,000

tons of freight per year, while today they carry approximately 2,400,000,000 tons per year. This comparison of the growth of revenue and tonnage between 1887 and 1921 is startling. It shows that while the tonnage has grown four fold the revenue has grown approximately seven fold. In 1887 the capital invested in railroads was something like $8,000,000,000 while today it is approximately $20,000,000,000.

There are not one, but a myriad of factors touching various phases of the transportation problem. Finance, corporate organization, corporate management, physical difficulties, construction, maintenance, cars, equipment, locomotives, motive power, road beds, side tracks, terminals, bridges, tunnels, make up yards, break up yards, hump tracks, efficiency, labor, railroad fuel, relations of the carrier to the public, specific relations of the shipper to the carrier, relations of shipper to the receiver of freight, way bills, straight and order bills of lading and numerous other details enter into the problem, such as classification of freight and the ability of traffic to bear the transportation charges.

This leads us, in the first place, to a discussion of the nature of the transportation

charge. The transportation charge enters into the cost of every article we use—of every necktie, collar, pair of shoes and overcoat. It enters into every article we eat. It enters into every item of building material, whether such be for housing or industrial purposes. In brief, the transportation charge is a tax,* and is just as much a tax as a real or personal property tax or a tax upon income. This $4,800,000,000 which the railroads will receive annually is a tax levied by the railroads and is equivalent to a tax of $44.00 upon each man, woman and child, and, being a tax, should be levied upon the principles of taxation. The most fundamental principle in levying taxes is to do so with regard to the ability to pay. The transportation charge being a tax on commodities, it should be made with regard to the ability of each individual commodity to pay the transportation tax. In other words, the mere cost of service does not, ought not and should not be the principle upon which transportation charges should be levied, but they should be levied with regard to the relative value of the service to the commodity transported and the relative ability of the commodity transported

* See former Commissioner Prouty in Every Day Ethics (1910) at p. 92, and Re Proposed Advance in Rates (April 1, 1903) 9 I. C. C. R., 382, at pp. 401, 402, 436.

to bear the transportation tax and should not be more than the traffic will bear. If transportation charges were levied upon the mere basis of cost of service, we would have approximately the same transportation charge on 100 pounds of silk as upon 100 pounds of sand or gravel. Cost of service would include, of course, not merely the out of pocket money cost of conducting transportation, but the capital cost, so there might be a fair return upon the private capital invested in the performance of a public function, providing, of course, the railroad was reasonably necessary in the public interest, fairly capitalized and conducted with reasonable efficiency.

These transportation taxes, therefore, should be levied not upon a principle of the value of the service to the shipper, but upon the principle of the relative value of the service to the commodities carried, a distinction not always kept in mind or expressed with clearness. We must not misunderstand the expression, "value of the service." "Value of the service" does not mean the profitableness of the transportation to each shipper and how much the service contributes to the profits made by each shipper, otherwise we would

have a separate transportation charge as to each individual, measured in part at least by the wisdom and efficiency with which each individual conducts his particular business. Of course, the relative cost of service and the net return on each class of traffic are also proper factors to be taken into consideration.

Transportation charges, which as we have shown, are in every sense a tax, should be levied in such a manner as to promote our commerce and trade. In this connection it should be ever kept in mind that, as well said by an economist of international reputation,* that transportation charges (including highway, water and rail), are the first and heaviest taxes paid by capital and labor. In fixing transportation charges we should keep constantly in view the great national policy of the distribution and diffusion of population and industry as a part of the growth of a great national life. Transportation charges should be so distributed and so levied so far as possible as to give the people a right to resort to as many markets as posible and thereby keep constantly in play the great economic force of competition. Freight charges should be levied so far as

* Henry C. Carey. See Haney on the History of Economic Thought (1917) at p. 326. Carey uses the language "land and labor." Land connotes capital.

possible not only to bring about competition as between producers, but also to give the consumer an opportunity to resort to as many markets as possible and bring those markets into competition and thereby stimulate initiative on the part of producers to attain the highest standard of production that efficiency and enterprise can bring about.

A transportation charge on a commodity should not be treated *per se* or of itself, but relatively. There ought to be a proper relationship as between commodities, having due regard to the ability of the commodity transported to pay and bear the transportation tax. Low grade commodities, such as sand and gravel, should not pay as much transportation charges relatively as higher grade commodities. Sand and gravel and building materials are articles of necessary use. They are essential not merely for the housing of the people, and for the building of industrial plants, but for the building and development of our highways. Before the steam railroad had demonstrated its practicability our national Government took steps for our internal improvement by the building of national highways. With the phenomenal growth of our country and the increased necessity for trans-

portation facilities of every kind the highway has become an important part of our national life. Congress found it necessary before the advent of the steam railroad to develop our highways. Congress now finds that even with the changed conditions of more than a century that it is more necessary than ever that there should be an improvement of our highways. The highway of today is not a mere convenience for pleasure vehicles, but a necessity for the trucking of commodities. The old lightly constructed public road is no longer adequate to meet the demands of today and tomorrow and must be replaced by new roads under revised specifications. The States are cooperating with our national body in the same work.

Every factor points to the fact that low grade commodities such as sand and gravel should bear a comparatively low transportation tax. Considered from the point of view of the cost of service and relative value of service to these commodities and what the traffic will bear, this transportation tax should be on a low level in the case of sand and gravel. The transportation of sand and gravel yields to the carrier a comparatively large net return for the use of equipment. These commodities load

heavily; they do not require any special or expedited service. Sand and gravel will move in large volume under a low level of rates and therefore a low level of rates is necessary to stimulate the movement. The volume of the movement of the traffic is an important element in determining what shall be a proper level of rates because traffic moving in small volume is relatively more costly per unit to the carrier and yields relatively a less amount of net revenue per unit than traffic moving in large volume. There is a false idea that higher rates are synonymous with higher revenue.* Nothing was ever more fallacious. In the exact science of pure mathematics five and five make ten. As economics is not an exact or mathematical science and transportation is a branch of economics, five and five do not always make ten. A twenty-five per cent increase plus a forty per cent increase in freight rates does not of itself mean a sixty-five per cent increase in revenue.

A study of the transportation problem from

* See former Commissioner Prouty in Proposed Advance in Rates (April 1, 1903) 9 I. C. C. R., 382, at p. 396. In Ackworth on the Elements of Railway Economics at p. 60 (1905) it is stated: "Further, we have seen that rates far below the normal scale may still be profitable, even exceptionally profitable, and that rates would have to be cut almost to a vanishing point before it could be said that the traffic to which they were applied was carried at the expense of other traffic."

the earliest history of our country shows that the whole scheme of rates should be applied on the principle of stimulating traffic and making possible long haul traffic, which long haul traffic produces the largest net return to the carriers. Every transportation service involves at least two terminal services. These two terminal services are ever present whether the traffic is hauled one mile or 1,000 miles. Relatively terminal service is the more expensive element in transportation cost. Traffic should be distributed over as wide an area as possible. Rates should have such a relative adjustment as to put in motion not merely short haul but long haul traffic. Rates on low grade traffic should not be made upon a mileage basis with blocks and zones, but should be made keeping constantly in view the stimulation of traffic and bringing commodities moving short distances and longer distances into competition. There should be proper groupings of producing points and a proper grouping of destination points with the blanketing of rates. Of course grouping should not be so small as to make the scheme of rates a mileage scale in effect, if not in form, nor should groupings be so large as to give undue, unreasonable and improper advantage to some

locality. Groupings should be large enough to bring competitive forces into play so there might be competition between producing points and thus create many markets of production to which a prospective consumer might resort and thus keep competitive forces in full play. Of course, I do not mean a wasteful competition, but I do mean a reasonable and due competition. A reasonable and due competition is the life of trade and an unreasonable, undue and wasteful competition is the death of trade. Competition is for the benefit of the public by giving the public the right and opportunity to resort to many markets of production.

Rates as between competing markets should have some fixed relationship by fixed differentials. These differentials should in part reflect the advantage of geographical location and in part the relative difference in cost of conducting transportation. A differential reflects and measures the ability of one market to absorb the difference or spread in rates out of profits. It can be readily seen that if the differentials are too great the ability of one market to compete with the other market will disappear and thereby destroy the opportunity of the consumer to resort to many markets.

Differentials should, as far as possible, be fixed and not changed with every change in the general level of rates.

Rates should be relative not only as between commodities, but also should be relative as to communities of production and consumption. We must not, of course, be led to believe that the level of rates is not one of great importance, because the level of rates being, as we have seen, a tax, such transportation tax should be levied primarily on the principle of the ability of the commodity to bear the tax. While the matter of the level of the rates is of great importance, the relationship of rates is at least of equal importance, and in many cases of even greater importance and more far reaching in consequence than the matter of the level of rates.

The stability of a freight rate structure is one of moment. Not only should rates on low-grade commodities be on a low level so the transportation tax will not impose an undue burden upon production and distribution, and not only should rates be relatively just and reasonable, but the whole structure of rates should be stable, so as to encourage those who have already invested their money in producing plants to extend such plants to meet

the public demand, and should also be so stable there will be some assurance that if a producer invests his money in a plant he will have some reasonable assurance of a fair return upon his investment and for his effort and he will not by some sudden rupture of the freight rate structure have his investment ruined and be driven out of business. Stability of rates is involved in the matter of rate relationships, groupings and fixed differentials already discussed. The stability of a freight rate structure is, therefore, highly important to induce the investment of money in industrial enterprises, and within the range of industrial enterprises is included, of course, the sand and gravel industry. Furthermore, we are having an ever-increasing population, and therefore an ever-increasing demand. To meet the ever-increasing demand it is necessary to have an ever-increasing growth of our industries. It is therefore necessary that there should be stability in the freight rate structure, so as to furnish a producer an incentive to extend and expand his business to meet the public requirements. It must be obvious that the stability of a freight rate structure is of the highest importance to our industrial and commercial development. Sta-

bility invites investment of capital in the establishment of industries and makes possible the extension of such industries when once established. Modern industry is alone possible through our modern system of capitalization. The capital which builds our industries and extends our activities largely represents the savings of the people. It is the savings of the people which today represent the bulk of the capital of the nation. Capital has become democratic through corporate activities by which modern business is conducted.

In order to fully analyze the situation and determine the proper level and relationship of rates on the commodities sand and gravel and their ability to bear the present excessive level of transportation charges, accurate knowledge would be useful as to the present and potential volume of the sand and gravel industry. The United States Government is performing an important function in collecting statistical information. Unfortunately the sand and gravel interests have not fully advised the United States Geological Survey as to the production of sand and gravel. The Government figures for 1917 show that about 77,000,000 tons of sand and gravel were produced during that year, of which about 11,-

000,000 tons of sand were for what might be called industrial purposes, such as for glass factories, etc., and 66,000,000 tons of sand and gravel for building, paving and ballasting purposes. Mr. Sutton* in his report this morning stated that the potential sand and gravel production was approximately 300,000,000 tons per year. The Government figures therefore seem to indicate that only about 25 per cent of the production of sand and gravel was reported to the United States Geological Survey. It would seem that it will be in the interest of the sand and gravel industry, now that it has become thoroughly organized, to make full reports to the United States Geological Survey so as to show the immensity and importance of this industry. It would seem probable that revising the figures as to the total production of sand and gravel and making the same apportionment as to uses as the Government has made, about 40,000,000 tons of sand are produced per annum for industrial purposes and about 260,000,000 tons of sand and gravel for building, paving and ballasting purposes. All sand and gravel must undergo transportation by

* Mr. E. Guy Sutton, business manager of the National Association of Sand and Gravel Producers.

truck, water or rail, and while a large amount of sand and gravel does not undergo railroad transportation, very much does undergo a rail haul.

Taking 300,000,000 tons of sand and gravel as a year's production would indicate that each year there is produced three tons of sand and gravel for every man, woman and child in the United States. Reducing this to a pound basis, there is produced in the United States annually 6,000 pounds of sand and gravel for every man, woman and child. Sand and gravel has become one of the basic materials necessary in our industrial and social life. There being a necessary use of sand and gravel, it follows as a corollary that there should be a low level of rates on sand and gravel not only that there might be a proper relationship of rates on sand and gravel to other commodities, but to stimulate its movement. A proper level of rates on sand and gravel and a proper relationship of such rates to all commodities and the necessity for a stable freight rate structure and a proper grouping of points of production and points of consumption and proper fixed differentials as between producing points, should challenge the attention of your organization.

Before leaving the subject of the level of rates attention should be called to the fact that the Interstate Commerce Commission in Ex Parte 74 directed specific attention to sand and gravel. The time is approaching, if it has not already arrived, when a request should be made to the Commission to reopen and rehear Ex Parte 74 * to the effect that rates generally and particularly upon sand and gravel should be reduced. The increases provided for in Ex Parte 74 were predicated upon a state of facts presented to the Commission at the time that case was decided. Since then there has been a radical reduction in the cost of operation and there will be further reductions in the near future. One large item of operating expense is fuel. The annual production of coal in the United States is approximately 646,000,000 tons† and about 18 per cent of this or 113,000,000 tons are used for railroad fuel. The cost of fuel has rapidly declined and will continue to decline and will result in a very large saving in this respect. There is also manifesting itself a greater efficiency in railroad labor and this must necessarily result in a reduction in the number of employees with a consequent

* 58 I. C. C. R. 220 (July 29, 1920).

† 89,000,000 anthracite and 556,000,000 bituminous.

further reduction in the cost of transportation. There must likewise be a revision of the wage scale which is on too high a level. Maintenance of road and equipment furnishes a large item of the cost of transportation and with the reduction in the price of material and labor this item will also be very much curtailed.

There are certain fundamental principles which should underlie the whole body of law and regulations pertaining to transportation. I wish to venture to announce two. The first, is that our national policies should be embodied in laws enacted by legislative bodies composed of representatives of the people elected by the people. To make this proposition very emphatic I want to make it perfectly clear that this first fundamental principle involves the idea that laws are in fact made by the people and that laws should reflect the sentiment of the people as to the solution of our social and economic problems. I also want to make it clear that legislatures are rather law giving bodies than law making bodies, giving out to the people laws relating to their activities in life, such laws embodying policies desired by the people in the interest of the people. In this way laws should reflect public sentiment.

The sentiment of America from the earliest Colonial days has been to make our nation self-contained by a diversity of industries within our own borders and to make us independent of foreign nations. This national policy should be reflected in every national law given to the public by Congress. Our national policies should not be declared by any public officials other than those elected by the people. The second fundamental principle is that a legislative body is not constituted in such a manner as to enable it to administer the law. In other words, while the people determine our national policies and such national policies are given out in the form of written statutes by a legislative body, such legislative body should not be called upon and is not best qualified to administer such laws. The complexity of modern civilization and industry, commerce and economic conditions are such that laws touching same can only be efficiently administered through public administrative bodies qualified by learning, study, training and experience to administer the public policies embodied in legislation. Such appointive administrative bodies should not directly or indirectly be given power to determine our national policies, but should merely administer our national

policies as embodied in national laws. Pursuant to the demands of the people for the regulation of railroads Congress enacted the Interstate Commerce Act and embodied therein three great ideas as a part of our national policy that rates should be just and reasonable and that common carriers should not practice discriminations and that all should stand on an equality before the law. The Interstate Commerce Commission was created to administer these national policies. The Interstate Commerce Commission was never endowed by law with power to determine our national policies, but solely with power to regulate the railroads. That the Interstate Commerce Commission was not created for the purpose of regulating our industries was well expressed by Senator Calder that this body was created to regulate the railroads and not created to regulate the industries of our country.

It must not also be forgotten as a fundamental principle that railroads are mere public instrumentalities of commerce* and that the railroads should not control or seek to regulate industries. I wish to remind you, however, that the railroads in carrying on our

* Olcott vs. Supervisors (1872) 16 Wallace, 678; Mr. Justice Strong, at pp. 694, 695.

transportation and the Interstate Commerce Commission in regulating the railroads as instrumentalities thereof in furtherance of that commerce, should keep in view that such instruments should be regulated for the purpose of facilitating and not obstructing such commerce, and that since the Interstate Commerce Commission was not created for the purpose and it is not a part of the functions of the Interstate Commerce Commission to regulate the industries of the country, it should not in the exercise of its functions allow the railroads to, nor should it by any of its orders interfere with the economic liberties and freedom our industries enjoy under our national policies declared in our national legislation. It is for Congress alone to curtail the economic liberty and freedom of our industries, and then only to the extent that the same may be necessary in the public interest. It may also be said that when the absolute economic liberty and freedom of a few endanger the economic freedom and liberty of the whole of society, Congress may properly regulate same. These are functions of an elective legislative body and not the functions of an administrative body appointed merely to administer public policies as embodied in

the laws of the nation. All business, whether of a public or private nature, should enjoy economic liberty and freedom to the fullest extent possible, limited only when and to the extent that the enjoyment of full economic liberty or freedom is destructive or harmful to the general public welfare. However, such policy should only be declared by the elected representatives of the people. When the administration of a law curtailing or regulating economic liberty or freedom is committed to an administrative tribunal such administrative body should only proceed to make findings and enter orders under a due process of law of notice, hearing and report, giving the reasons upon which its findings and orders rest. That an administrative body appointed by law and informed by experience should only proceed under due process of law of notice, hearing and report was embodied in the original Interstate Commerce Act of 1887. It specifically provided that orders should only be made upon full hearing and full hearing meant an open hearing and not one in star chamber. Former Commissioner Lane well said nearly eleven years ago in the Advance of Rate Case of 1910* that the Commission

* 20 I. C. C. R., 307, at p. 317.

was a "select jury," and it has been a fundamental principle of our jury system that hearings must be public. Notwithstanding the admonition of the original Interstate Commerce Act declaring that administrative bodies should make no orders except upon full hearing, we find the Interstate Commerce Commission wandered away from the safe limitation requiring public hearing and entered orders based upon information privately obtained. The railroads attacked the orders of the Commission because they were entered without the due process of law of a full public hearing necessary for a wise administration of the law by an administrative body. The wisdom of the principle of notice, public hearing and report is shown in two opinions by the Supreme Court of the United States, one by Mr. Justice Holmes and the other by Mr. Justice Lamar. What they said upon the subject is so pertinent and so full of common sense and of such weight that it will repay to quote therefrom. The first was the Baltimore & Ohio Southwestern Railway Case* decided November 11, 1912, wherein Mr. Justice Holmes said: "It is unnecessary to consider objections to the conclusion of the Commission

* 226 U. S., 14, at p. 20.

that it was safe and reasonably practicable, etc., to establish the switch. We remark that it is stated in the Commission's report that they base their conclusion more largely upon their own investigation than upon the testimony of the witnesses. It would be a very strong proposition to say that the parties were bound in the higher courts by a finding based on specific investigations made in the case without notice to them. * * * Such an investigation is quite different from a view by a jury taken with notice and subject to the order of a court, and different again from the question of the right of the Commission to take notice of results reached by it in other cases, when its doing so is made to appear in the record and the facts thus noticed are specified, so that matters of law are saved."

The other is the Louisville & Nashville Railroad Case * decided January 20, 1913. In one of the ablest opinions ever delivered by that Court, Mr. Justice Lamar said: "The Government further insists that the Commerce Act (36 Stat. 743) requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created, and having been

* 227 U. S., 88, at pp. 93-94.

given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing,—for manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain, or refute. The information gathered under the provisions of sec. 12 may be used as basis for instituting prosecutions for violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. The Commission is an administrative body and, even where it acts in a quasi-judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. * * * But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to

be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding, for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, known but presumptively sufficient information to support the finding."

The Esch Car Service Act of 1917,* embodied and amplified in the Transportation Act of 1920,† unwisely departed from the fundamental principle that an administrative body should not enter an order without notice, hearing and report. The Transportation Act of 1920 did not command the Commission to proceed without notice, hearing and report, but made same permissive. The car service sections of the Transportation Act of 1920 were imprudent in permitting an administrative body such as the Interstate Commerce Commission to proceed without notice, hear-

* 40 Stat., 101; approved by the President, May 29, 1917.
† 41 Stat. 456; approved by the President, Feb. 28, 1920.

ing and report and the Interstate Commerce Commission was unwise in exercising the right conferred by the Transportation Act of 1920 to proceed without notice, hearing and report.

Happenings under the car service section of the Transportation Act of 1920 have demonstrated the wisdom of the fundamental principle that an administrative body whose members are appointed by law and are not elected by the people should only proceed upon notice, hearing and report and that none of its hearings should be in star chamber. If there ever was a principle abhorrent to Anglo-Saxon jurisprudence, it is the idea of a star chamber. Administrative bodies can proceed only on information and the information must be obtained either in star chamber or at hearings open to the public. That practical experience demonstrates the lack of wisdom of proceeding without notice, public hearing and report is shown by reference to some of the proceedings by the Commission in issuing car service orders without notice, public hearing and report. What I want to say is merely by illustration and is not intended as a reflection in the least upon any particular industry or upon any national association or organization having to do with that industry. Every industry

is entitled to organize, and not only is every industry entitled so to do, but it is the duty of every industry to organize, and it is in the public interest that every industry should do so. It is extremely desirable from the point of view of public policy that an industry should organize to bring about an exchange of industrial and commercial ideas, to bring home accurate information to every person engaged in that industry for the purpose of stabilizing the industry and of bringing about due and reasonable competition and to avoid undue, unreasonable and wasteful competition. I am going to illustrate what I have to say by an extract from Volume 2 of the minute book of the National Coal Association of July 15, 1920, page 232, which was produced before the Calder Committee on Reconstruction and Production * as follows:

"The operators' committee insisted the reason the necessary coal had not gone to the lakes was that the railroads had not given the mines cars, and said the remedy was up to the railroads. They were asked how the five million tons could be made up. The operators said that if cars were supplied to move the thirteen

* Page 583, Hearings Before the Select Committee on Reconstruction and Production, United States Senate, December 22, 1920.

million to fourteen million tons of coal the commercial interests at the heads of the lakes have at present under contract, the lake situation would be taken care of.

"To accomplish this, however, the operators felt that governmental action would be necessary to make diversions of coal from mines which have no lake contracts, but which have sold coal in other directions, to render such mines immune from damages; that is, for failure to supply contract customers, and that some sort of order must be issued by the Interstate Commerce Commission which will make diversions of coal legal.

"The railroad executives made a strong plea with the lake shippers, in the event such action be taken by the Interstate Commerce Commission, which the operators agreed is the only body that can take legal action in connection with this situation, began shipping coal up the lake in unusual volume, if the cars are provided. They said they would have an increased car supply put into this territory, and instead of operators shipping that coal to the East and to other territory cooperate to get it to the lakes.

"President Wentz reported that the car distributing men of the railroads transporting

coal into the Eastern territory, particularly the railroad transporting to the lakes, would meet Mr. Morrow, Mr. Callaghan, Mr. Griggs, and Mr. Groverman, and some operators familiar with the coal situation, this morning at 10 o'clock and try to work out a basis of an order which will be recommended to the Interstate Commerce Commission."

Mr. J. D. A. Morrow, the very able and public spirited vice president of the National Coal Association, testified before the same committee* on December 22, 1920, as follows:

"Senator Kenyon: * * * Then you went ahead—your committee—to draft an order for the Interstate Commerce Commission covering this very question, and presented that to the commission, didn't you?

"Mr. Morrow: Yes.

"Senator Kenyon: That order—the commission then made an order? Did you draft the order? Is this the order?

"Mr. Morrow: With some slight changes, they did. I do not know where this came from.

"Senator Kenyon: It was in your papers.

"Mr. Morrow: It probably is a draft of an

* Page 583, Hearings Before the Select Committee on Reconstruction and Production, United States Senate, December 22, 1920.

order. I do not know about that.

"Senator Kenyon: So that the probability is that your committee drafted the order?

"Mr. Morrow: Oh, there is no doubt about that.

"Senator Kenyon: And the commission put it into effect. That relieved the parties under contract from not performing their part of the contract."

The foregoing illustrates the danger of permitting an administrative body created to administer the legal standards enacted by Congress, to act upon ex parte information of one group of the public without a public hearing. The entire public should have notice that such administrative body is going to take under consideration the wisdom in the first place of declaring an emergency and in the second place of issuing an order and its extent and thus have an opportunity to weigh its economic consequences. The commission in the first place took up a consideration of the subject without giving notice to all groups of industrial and commercial activities and without notice that they were going to take up such subject. In the second place the commission should have received information in the open public and not in star chamber so

that every person might be advised of the evidence produced so that full facts might have been given from the various classes of industry and trade affected. The danger of a star chamber method of procedure authorized by the car service sections of the Transportation Act of 1920 was fully emphasized by Mr. George H. Cushing, the brilliant and versatile managing director of the American Wholesale Coal Association, in the American Coal Wholesaler for December 27, 1920, wherein he stated: "Public officials who were supposed to be informed about the conditions of the common carriers continually harangued the people about grave dangers of an impending coal famine. This spread panic among the buyers."

In the next place the Commission should not issue or be permitted to issue orders without filing a report setting forth therein the basis upon which the orders were made so that the public might examine the reasons on which the orders were based and be given an opportunity to call the Commission's attention to any error in which it is believed the Commission may have fallen in order to set the Commission right so that the Commission might revise its orders in view of additional facts,

arguments and reasons brought to its attention. If there were such notice and public hearing in the first place, the full facts and circumstances could be fully developed as to whether an order should be issued and the terms of the order if the Commission should reach the conclusion that it was proper to issue an order. When an order is issued it should be accompanied by a report showing the reasons upon which the order is based. The great success of the Interstate Commerce Commission and its comparative freedom from harsh and unjust criticism has undoubtedly come from the fact that the Commission from its creation not only held full hearings upon notice, but has handed down reasoned opinions so that the public might examine into the reasons, facts and circumstances upon which the orders of the Commission were based. Because the Commission has handed out reasoned opinions from its inception is to be attributed the usual soundness of its conclusions and the almost universal commendation of the work of a body whose activities were in the beginning of a purely experimental nature. Personally I am of the belief that it was wise public policy to have created the Federal Trade Commission and

that there should be vested in that body original and exclusive jurisdiction over all matters pertaining to anti-trust legislation and monopolies, yet there has been no administrative body created in this country pertaining to our industries and commerce which has received greater and more deserved criticism than the Federal Trade Commission. I attribute the failure of the Federal Trade Commission and its deserved unpopularity largely to the fact that that body did not follow the policy of handing down reasoned opinions. The Federal Trade Commission from its inception to date has not, with the possible single exception of the matter involving the basic price of iron and steel, handed out anything that resembled a reasoned opinion. If the Federal Trade Commission had abstained from handing out orders except when accompanied by reasoned reports, it is more than probable that many orders handed out by it would never have been made if it had been required by law to hand out reasoned opinions. In the second place if it had handed out reasoned opinions in connection with its orders, the public would have had an opportunity to examine the reasons upon which they were based and the public would have assisted the

Federal Trade Commission in reaching sound conclusions and thereby inspired in the Federal Trade Commission the confidence of the public which it does not now possess.

There are even stronger reasons why an administrative body such as the Interstate Commerce Commission should hand down reasoned opinions with every order than that a court should hand down reasoned opinions with its judgments. This is especially true as to any case of general interest to the public. This is forcibly illustrated by the cases before the Supreme Court of the United States involving National prohibition under the Eighteenth Amendment.* A majority of that court in deciding those cases merely announced conclusions and judgment without giving reasons. Mr. Chief Justice White † in a concurring opinion severely criticised his judicial brethren as follows: "I profoundly regret that in a case of this magnitude, affecting as it does an amendment to the Constitution dealing with the powers and duties of the National and State Governments, and intimately concerning the welfare of the whole people, the court has deemed it proper to state only ultimate

* National Prohibition Cases (June 7, 1920) 253 U. S., 350.
† At page 388.

conclusions without an exposition of the reasoning by which they have been reached.

"I appreciate the difficulties which a solution of the cases involves and the solicitude with which the court has approached them, but it seems to my mind that the greater the perplexities the greater the duty devolving upon me to express the reasons which have led me to the conclusion that the Amendment accomplishes and was intended to accomplish the purposes now attributed to it in the propositions concerning that subject which the court has just announced and in which I concur. Primarily, in doing this I notice various contentions made concerning the proper construction of the provisions of the Amendment which I have been unable to accept, in order that by contrast they may add cogency to the statement of the understanding I have of the Amendment."

Mr. Roscoe Pound, Dean of the Harvard Law School, in an article on "Justice According to Law," appearing in the Columbia Law Review * pointed out that the chances that a judge might be biased or might render a superficial judgment would be minimized if the judge knew that the grounds of his conclusion

* Vol. 14, pp. 103, 108-109, note 4.

would be subject to scrutiny by both the laity and the bar, and furthermore the mere fact of a judicial opinion might appear sufficient to allay public distrust. In addition the opinion furnishes an indispensable basis for intelligent criticism as pointed out by the Harvard Law Review.*

A great objection to the car service sections of the Transportation Act of 1920 is that they allow preferences and priorities. When we consider the nature of our national commerce, there are serious objections to putting such power in the hands of an administrative body. We should again for a moment revert to the history of our national development. We have seen that from the earliest Colonial days to the present time it was the policy of our Colonial legislative bodies, the policy of our Continental Congress, the policy of Congress under the Articles of Confederation and the continued policy of Congress under our Constitution to make America self-sustaining by fostering and encouraging the building up of diversified industries so that America might be so far as possible self-contained in its national life and national strength. On the faith of that policy people have invested their earnings in the

* Volume XXXIV, Number 3, pp. 314-315, for January, 1921.

building up of not only one indsutry but many industries, and all industries should be equal under the law and entitled to the equal protection of the law, and to give preference and priority to one industry as against another is to destroy the equality of industry before the law. It is contrary to every principle of our national development to foster one industry at the expense of another. Each and every industry is entitled to the fostering care of the nation without preference and without priority and without discrimination. It is therefore in the general interest that the car service act should be amended so as to do away with preferences and priorities as among industries. Mr. Cushing in the article before referred to well said: "I was also asked how I stood on the question of the service orders of the Interstate Commerce Commission. I said that I had fought them from the beginning as a bad governmental method. I said I was still opposed to them. My reason was that I could not see how it was fair for one group of Government officials to create a panic in the minds of buyers and then for another group of Government officials to try to remove the effects of that panic by regulating a great industry like coal."

As heretofore stated, the function of the Interstate Commerce Commission is to regulate the railroads and not to regulate our industries. The national public policy of the United States is to encourage and promote all industries and not one industry at the expense of another. The matter of our national policies is one to be determined by our national legislative body elected by the people. The function of an administrative body such as the Interstate Commerce Commission is not to declare our public policies, but to administer the public policies proclaimed by Congress. When Congress enacted many provisions of the car service sections of the Transportation Act of 1920 it did more than perform its function as a law giving body, but attempted to perform the function of a law making body and made laws which were not in harmony with the settled ideas and convictions of the American people. The settled conviction of the American people is equality before the law without preference and priority and without discrimination.

The carriers have not in the past provided themselves with adequate facilities for performing their functions as common carriers. The common carriers should be required to

provide themselves with equipment sufficient to carry the maximum traffic during the periods of maximum requirements. In this respect the common carrier should be in the same position as any ordinary industry, because every industry seeks to provide the maximum capacity to take care of maximum consumption. It is true that if the carriers so provided themselves, during the period of minimum consumption, there would be a surplus of cars. This is one of the costs of transportation which the public is ready to bear. The common carrier must make provision to take care of fat as well as lean seasons just as industry does. The Transportation Act of 1920 makes it mandatory that a common carrier shall provide itself with safe and adequate facilities for performing as a common carrier its car service. Unless the provisions of the car service sections are eradicated permitting an administrative body to issue orders without notice, without hearing and without report and giving preferences and priorities, the carriers will never provide themselves with adequate facilities, but will seek refuge behind the emergency powers of the Transportation Act of 1920. Nothing will be more conducive to the enforcement of the mandatory provisions

of the Transportation Act of 1920, requiring the carriers to provide themselves with adequate facilities for transportation, than to take away from the Interstate Commerce Commission the power to proceed without notice, without hearing and without report and the power to declare emergencies, preferences and priorities.

There is an important particular in which the Transportation Act of 1920 is defective. Rules and regulations as to car service in the early days of transportation were not of such importance as they have become in modern times when most traffic originating on one line is delivered on a connecting line. Prior to the Hepburn Act of 1906 amending the Interstate Commerce Act the carriers were not required to establish through routes and joint rates applicable thereto. In the old days a carrier carried the traffic to the end of its own line in its own cars and then transferred the contents thereof to the cars of a connecting carrier. This was an expensive and uneconomical method of transportation. The Hepburn Act of 1906, which provided for the establishment of through routes and joint rates applicable thereto, also provided that there should be just and reasonable regula-

tions for the interchange of traffic and equipment. Railroads have in the past formulated many excellent and sound rules and regulations as to interchange of cars. Unfortunately, however, the rules and regulations thus promulgated by the carriers were not made part of the tariff publications on file with the Interstate Commerce Commission and were often honored more in their breach than in their observance. The observance of just and reasonable car service rules and regulations and their enforcement by the Interstate Commerce Commission would go far toward relieving the car situation. The Esch Car Service Act of 1917 contained a provision that the Interstate Commerce Commission could in its discretion require the railroads to file their car service rules as a part of their published tariffs and this has been repeated in the Transportation Act of 1920. It will be noted, however, that this provision is not mandatory. For some reason the Interstate Commerce Commission has never exercised its power to require the carriers to file their car service rules as a part of the published tariffs. It may be that the Interstate Commerce Commission is waiting until there is some concerted movement by organized industries to

request it to enter an order requiring the carriers to file with the Commission car service rules as a part of published tariffs. In view of past experience the time has arrived when there should be some united movement on the part of commerce and industry to have the Transportation Act of 1920 amended so that common carriers will be required to file their car service rules with the Interstate Commerce Commission. When filed with the Interstate Commerce Commission that body will have full power to condemn such of the car service rules as are unjust and unreasonable and substitute in lieu thereof just and reasonable car service rules and furthermore have the power to see that these car service rules are obeyed by the carriers. In my judgment this is one of the most important steps to be taken to insure better car service.

There is another question that presents itself under the Transportation Act of 1920. In the old times the railroads assigned cars to a mine for railroad fuel and did not count the same as against the mine. It thus had power to favor one producer as against another. A mine furnishing railroad fuel could get 100 per cent car supply and another nothing. The railroads thus were able to beat

down a producer of coal in his price and buy coal with cars.* The coal producer who would not submit to the railroads dictating the price of coal and would not sell coal for car supply could be put out of business. Paragraph 12 of Section 1 of the Transportation Act of 1920 sought to break up the practice of assigned cars and destroy the power of the railroad to buy railroad fuel with cars. The public thought they had broken up the practice of the railroads favoring one mine as against another. The Interstate Commerce Commission, however, under the powers of Paragraph 15 of Section 1 of the Interstate Commerce Act as amended by the Transportation Act of 1920, held that they had power in case of emergency to suspend the provisions as to assigned cars. One of the coal operators applied for an injunction before a District

* See Railroad Commission of Ohio vs. Hocking Valley R. R. Co. (July 11, 1907), 12 I. C. C., 398, at pp. 400, 402, 410 and 411; Royal Coal and Coke Co. vs. Southern Railway Co. (April 13, 1908), 13 I. C. C., 440; Traer vs. Chicago & Alton R. R. (April 13, 1908), 13 I. C. C., 451; Traer vs. C. B. & Q. R. R. (June 24, 1908), 14 I. C. C., 165; Rail and River Coal Co. vs. Baltimore & Ohio R. R. Co. (June 2, 1908), 14 I. C. C., 86; Jacoby & Company vs. Pennsylvania Railroad Co. (March 7, 1910), 19 I. C. C., 392; Bulah Coal Co. vs. Pennsylvania Railroad Co. (December 5, 1910), 20 I. C. C., 52; Coal and Oil Investigation (June 9, 1914), 31 I. C. C., 193, at p. 218; Logan Coal Company vs. Pennsylvania Railroad Co. (July 1, 1907), 154 Fed. Rep., 497, at p. 503; Interstate Commerce Commission vs. Illinois Central R. R. Co. (January 10, 1910), 215 U. S. 452, at p. 464; and Morrisdale Coal Co. vs. Pennsylvania Railroad Co. (June 9, 1913), 230 U. S., 304, at p. 312.

Judge, which injunction was granted. The Circuit Court of Appeals* reversed the action of the District Judge and the Supreme Court refused to review the proceedings on writ of certiorari. Thus the power of the Commission to suspend the assigned car rule in cases of emergency was affirmed. I allude to the matter of assigned cars as to coal because there may be a similar practice where carriers obtain gravel for ballast from the gravel industries. I refer to this fact of assigned cars for gravel for railroad ballast to show that the Transportation Act of 1920 while taking care of the industry of coal failed to take care of the gravel industry and thereby did not place the gravel industry on the same basis before the law.

Before concluding I want to discuss the question as to administrative bodies generally and the Interstate Commerce Commission in particular. There are many who argue that human activities of all kinds should be freed from legislative regulation and particularly freed from regulation by Commission. There are those, however, on the other hand who believe that our great national policies should be

* Baltimore & Ohio Railroad vs. Lambert Run Coal Co. (August 11, 1920), 267 Fed. Rep., 776.

declared by Congress, which is an elective body made up of the representatives of the people, and the administration of these policies should be left to administrative bodies. These same advocates of administrative bodies believe that Congress in enacting legislation pertaining to our national policies should set up legal standards and that an administrative body such as the Interstate Commerce Commission should ascertain the facts to bring cases within or without such legal standards and by orders so do. Personally I firmly believe in the wisdom of administrative bodies and particularly in the wisdom of the Interstate Commerce Commission which with rare exceptions has commended itself to the general approval of the public. Whatever may be the difference of opinion between those who believe in absolute economic liberty and freedom and those who believe that economic liberty and freedom may be curtailed and regulated when desirable in the public interest, Commissions have come to stay as a necessary part in the administration of right and justice. I want to allude to what was said upon this subject by Mr. Elihu Root, one of the greatest thinkers and philosophers of our day, in an address as President of the American

Bar Association * at Boston a few years ago, as follows: "There is one special field of law development which has manifestly become inevitable. We are entering upon the creation of a body of administrative law quite different in its machinery, its remedies, and its necessary safeguards from the old methods of regulation by specific statutes enforced by the courts. As any community passes from simple to complex conditions the only way in which government can deal with the increased burdens thrown upon it is by the delegation of power to be exercised in detail by subordinate agents, subject to the control of general directions prescribed by superior authority. The necessities of our situation have already led to an extensive employment of that method. The Interstate Commerce Commission, the State public service commissions, the Federal Trade Commission, the powers of the Federal Reserve Board, the health departments of the States, and many other supervisory offices and agencies are familiar illustrations. Before these agencies the old doctrine prohibiting the delegation of legislative power has virtually retired from

* Vol. 41, Reports of the American Bar Association (1916) pp. 368-369.

the field and given up the fight. There will be no withdrawal from these experiments. We shall go on; we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to rights and obstacles to wrong doing which under our new social and industrial conditions cannot be practically accomplished by the old and simple procedure of legislatures and courts as in the last generation. Yet the powers that are committed to these regulating agencies, and which they must have to do their work, carry with them great and dangerous opportunities of oppression and wrong. If we are to continue a government of limited powers these agencies of regulation must themselves be regulated. The limits of their power over the citizen must be fixed and determined. The rights of the citizen against them must be made plain. A system of administrative law must be developed, and that with us is still in its infancy, crude and imperfect."

In the light of what Mr. Root said we should give no countenance to any attempt to overthrow these administrative bodies in the exercise of such powers as are wisely conferred upon them, but we should seek to have eradicated from the law its unwise and unsound

provisions and we should ask the Interstate Commerce Commission to return to its original procedure of only issuing orders on notice, public hearing and report and thus fully restore the confidence of the public in that body, which confidence it has so generally deserved. We should likewise appeal to Congress to eliminate from the law any provisions that favor one industry as against another and return to the policy of equality of industries before the law, upon which principle American commerce and American Nationalism have been built up.

INDEX